

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF ALABAMA**

In re

Case No. 03-32161-WRS

Chapter 7

MATTHEW J. KALLMAN JR.,

Debtor

MEMORANDUM DECISION

This Chapter 7 bankruptcy case came before the Court for hearing on July 18, 2006. The Debtors were represented by counsel Robert L. Rash and Aliant Bank was represented by counsel Britt Griggs. The Debtors have filed a motion to Avoid the Judicial Lien of Aliant Bank. (Doc. 34). Aliant Bank opposes the Debtors' motion insofar as they request that the lien be cancelled. (Doc. 49). The parties have filed briefs. (Docs. 55, 56).

Aliant Bank has a money judgment against Debtor Matthew Kallman in the amount of \$7,051.76, which was filed with the Judge of Probate in Elmore County, Alabama, on July 8, 2002. The Debtors filed their petition in bankruptcy on July 16, 2003. On June 17, 2006, the Debtors moved, pursuant to 11 U.S.C. § 522(f), to avoid Aliant Bank's judgment lien.¹ The motion alleges that all of the Debtors' property is exempt and that the motion should be both

¹ Section 522(f) was amended effective October 17, 2005, pursuant to the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (Pub. L. 109-8)(BAPCPA). As this case was filed prior to the effective date of BAPCPA, the amendments do not apply here. Section 522(f)(1), as it stood at the time of the Debtors' petition was as follows:

Notwithstanding any waiver of exemptions but subject to paragraph (3), the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of the section.

11 U.S.C. § 522(f)(1).

avoided and cancelled. Aliant Bank balks at the Debtors' request to cancel the lien, as § 522(f) provides only for the avoidance of a lien. Aliant Bank does not object to the Debtors' claim of exemption or their efforts to avoid the judgment lien on exempt property.

At first glance, it is difficult to see what the fuss is about here. The Debtors want to avoid a judgment lien on their property and the Bank is agreeable to that. The problem arises in that the Debtors have asked that the judgment lien be cancelled. As the word "cancelled" does not appear in § 522(f), it would appear that the Debtors are overreaching. On the other hand, if the Debtors do not have any nonexempt property, one might wonder "what's the harm?"

One possible harm is that if the Debtors have undisclosed property, which would not be exempt, the avoided but not cancelled judgment lien would continue to encumber the undisclosed property. By cancelling the Bank's lien, they would be harmed. This is not to suggest that the Debtors in fact have property which has not been disclosed to the Court. However, there is no basis under the Bankruptcy Code to do anything more than avoid the judgment lien upon that property which has been disclosed in this proceeding.

The Debtors argue that it is necessary to cancel the lien so that they may borrow money. They contend that one prospective lender had denied them a loan, citing the Aliant Bank judgment. They contend that cancellation of the judgment lien is necessary for them to obtain their "fresh start." The Debtors have not submitted any evidence in support of their claim that they have been denied a loan, but even if we assume that it is so, there is no basis for cancellation of the judgment lien. Indeed, the position advanced by the Debtors here was rejected by the Eleventh Circuit in Wrenn v. American Caser Iron Pipe Co. (In re: Wrenn), 40 F.3d 1162, 1164-

65 (11th Cir. 1994)(holding judgment lien avoided to the extent of allowable exemption). See also Ogburn v. Southtrust Bank (In re Ogburn), 212 B.R. 984, 987 n.10 (Bankr. M.D. Ala. 1995); 11 U.S.C. § 524(a)(1)(stating judgment void to extent of personal liability).

The Court will enter an order granting the Debtors' motion insofar as the judgment lien of Aliant Bank is avoided on the disclosed, exempt property of the Debtors and denying their motion insofar as they request cancellation of the Aliant Bank judgment lien.

Done this 11th day of September, 2006.

/s/ William R. Sawyer
United States Bankruptcy Judge

c: Robert L. Rash, Attorney for Debtors
Britt Batson Griggs, Attorney for Aliant Bank
Susan S. DePaola, Trustee